

**Worker's Compensation
Proposals from Legislators and the Public
February 28, 2001**

The list is sorted by the date of the council meeting (or public hearing) at which the item was first reviewed.

Subject	Proposal	Requestor	Source/Date	Council Meeting
24-Hour coverage	Authorize employers to provide full 24-hour coverage--at least for medical coverage--because employers and employees both lose when insurers collect two premiums to cover the medical and administrative costs on two policies (one WC and one private health).	Rep. Vrakas Speaker Jensen for Berg Construction, Inc.	Letter, Jan 24, 2000 Memo, July 28, 1999 Letter, Dec. 23, 1999	January 28, 2000
<ul style="list-style-type: none"> Hearings Wages Track IMEs 	<ul style="list-style-type: none"> Provide faster hearings. Require the employer to pay a certain percent of the lost wage from the time the claim is denied to the time the ALJ's order is issued; the employer should share in the pain caused by delays. Collect and review data on the extent to which individual insurance companies use IMEs to deny benefits. 	3 Dane County employees Ms. Cheryl French Mr. Robert Carlson Mr. Pat Grove	Letter, Jan. 20, 2000	January 28, 2000
Tuberculosis presumption	<p>Create a rebuttable presumption for eight high-risk occupations (as defined by the Center for Disease Control) that tuberculosis is work-related.</p> <p><i>Comment. It appears that the proposal has been supported by:</i></p> <ul style="list-style-type: none"> <i>Dr. Vance Masci, MD, Milwaukee</i> <i>Professional Fire Fighters of Wisconsin, Inc.</i> <i>State Medical Society of Wisconsin</i> <i>Wisconsin Professional Police Association</i> <i>American College of Occupational Medicine</i> <i>American Association of Occupational health Nurses</i> <i>Wisconsin State Association of Occupational Health Nurses</i> <i>Wisconsin Federation of Nurses</i> <i>Wisconsin Nursing Coalition</i> <i>Wisconsin Nurses Association</i> 	<p>Correspondence has been received from:</p> <p>Police Fire Fighters Nurses Dr. Masci</p>	<p>Letter, May 1998 Letter, Feb. 16, 2000 Letter, Feb. 3, 2000 Letter, Feb. 25, 2000</p>	April 24, 2000
Continue benefits	Do not authorize an insurer to cut off benefits pending the hearing when there are conflicting medical opinions.	Rep. Jeskewitz for Mr. William Swift	Letter, Feb 29, 2000	April 24, 2000

Subject	Proposal	Requestor	Source/Date	Council Meeting
Hazardous "B" spills	Review Dane County and Firefighter's Association proposal for State of Wisconsin to pay for hazardous "B" spills. <i>Comment: Resolved by Department letter to chairs of Senate and Assembly Labor Committees on behalf of the Council, July 21, 2000.</i>	Rep. Powers	Letter, March 3, 2000	April 24, 2000
Pain and suffering	Authorize tort liability (exemption from exclusive remedy provision) for pain and suffering.	Rep. Krusick for Mr. Gregory Sarozek	Letter, May 23, 2000 Letter, April 7, 2000	October 28, 2000
Managed care option	Authorize pilot program in Wisconsin similar to California's ADR option for Bricklayers. Allow organized labor and management in the construction trades to negotiate a managed-care agreement that would minimize disputes about the nature, cause and extent of the injury.	Sen. Decker	Letter and materials June 15, 2000	October 28, 2000
Final medical reports	<ul style="list-style-type: none"> Extend final medical report from 3 weeks to 6 weeks in 80.02(2)(e)4. Extend the time to file the report (or an explanation of why it cannot be obtained) to 180 days. 	Don Grassl , Employers of Wausau, Council member	Letter, June 28, 2000	October 28, 2000
Group health insurance payments	Require the group health insurance company to pay for health care if it unclear whether the injury is work related, with subsequent reimbursement if necessary.	State Medical Society Wis. Chiropractic Assn.	Letter, Sept 27, 2000	October 28, 2000
COLA for permanent total disability	Create an automatic cost-of-living adjustment for workers who are permanently totally disabled. Mr. Ivan Peterson testified that he has been permanently totally disabled since he was hurt as a plumber in 1983 at age 47. For the first 5 years until his SSDI was approved (\$1100 per month) his only income to raise 4 kids (3 in high school) was \$294 per week in WC benefits. He had to pay \$20 per month in union dues and \$388 for family medical coverage. His SSDI and WC do not begin to keep pace with his real costs of raising a family.	Ivan Peterson Jerry Peterson Rep. Vrakas	Letter, July 21, 2000 Appearance Letter, July 20, 2000 Letter, Aug 16, 2000	October 28, 2000 January 29, 2001 October 28, 2000 October 28, 2000
Duty disability presumption	Create a presumption that thyroid cancer is work related for fire fighters. <i>Comment. Mr. Jones was advised this is not a WC issue and he should work through Employee Trust Funds on duty disability issues.</i>	Bill Jones	Appearance	PH - Nov 13, 2000

Subject	Proposal	Requestor	Source/Date	Council Meeting
Multiple proposals	<ul style="list-style-type: none"> • IMEs should submit the medical report under s. 102.13(1)(b)4 simultaneously to insurer and employee. If the IME fails to comply the ALJ may exclude it at hearing absent a showing of good cause. The current law requiring the carrier to send it "immediately" is ineffective. • Bad faith in s. 102.18(1)(bp) was enacted in 1981 with a \$15,000 cap. Since then, TTD has increased 220% and PPD has increased 262%. The bad-faith maximum should be increased to at least \$25,000. • Bad faith involving less than \$2,500 should be a \$5,000 penalty. • If the insurer misstates the worker's rights under the law (e.g., the worker cannot see a chiropractor) it should be bad faith. • Insurers should not be allowed to raise any defense under s. 102.42 against out-of-state treatment if, at the time of injury, the employee's residence was out-of-state. • Start the 7% interest credit under s. 102.32(6) from the date first due, not the date first litigated. 	Attorney John Edmundson	Appearance	PH - Nov 13, 2000
Prospective treatment	Authorize the Division to approve the need for prospective medical care where a tiebreaker cannot be used because liability is in dispute.	Attorney Anthony Welhouse	Appearance	PH - Nov 13, 2000
Defamation	Authorize an exemption from the exclusive remedy provision for co-employee defamation.	Rep. Duane Johnsrud	Bill draft, WLCS 0017/2, Dec 5, 2000	PH - Dec 12, 2000 (cancelled due to bad weather)
Council membership	Require that one or all members representing labor were previously disabled from a work injury.	William Swift	Appearance	PH - Jan 8, 2001
Third-party liability	Amend s. 102.29(1) to permit an injured employee and an employer or insurer that pays WC to bring an action on contract as well as tort against a 3 rd party for damages caused by the employee's injury. Under current law, an employer that pays WC benefits to an injured employee does not have the right of subrogation against uninsured motorist benefits that are available to the injured employee because those benefits are based on contract, not tort.	W. Martin Morics, Comptroller, City of Milwaukee	Appearance	PH - Jan 8, 2001

Subject	Proposal	Requestor	Source/Date	Council Meeting
Penalties for UEF administrator	<p>Amend 102.18 to allow bad faith against the UEF and the TPA for the UEF. The current TPA for the Uninsured Employer's Fund is too tough on paying benefits that should be conceded. This impression is based on talking with other attorneys and a case this attorney handled.</p> <p><i>Comment. Brian Krueger, Acting Bureau Director of the Division's Bureau of Insurance Programs, monitors the UEF for the Department. He fully reviewed the case cited by Mr. Cafaro and concluded the case had been handled entirely appropriately. He has discussed the situation at length with Mr. Cafaro.</i></p>	Attorney Roland Cafaro	<p>Appearance</p> <p><i>Memo, Brian Krueger, Jan 22, 2001</i></p>	<p>PH - Jan 8, 2001</p> <p>Jan. 29, 2001</p>
Hearings IMEs	<p>Provide faster hearings.</p> <p>Authorize employees to sue IMEs in tort if employees are injured by return-to-work based on IMEs' opinions and against the advice of the treating physicians.</p>	Richard Rubow	E-Public hearing comments, January 5, 2001	January 29, 2001
IMEs	Do something to minimize their impact in stopping benefits.	Randall Rush, Brillion Iron Works	Letter, Jan 23, 2001 Appearance	PH - Jan 29, 2001
Educate workers	<p>Injured workers do not understand their rights well enough.</p> <p>Mr. Spinn, President of AFSME Local 1616, testified that after a shoulder injury he had a good doctor, good coverage, almost complete healing and return-to-work. He said he had problems when there was a dispute about whether the injury was work related. He said workers need more information about their rights.</p>	Fritz Spinn, Sr., President, AFSME Local 1616	Appearance	PH - Jan 29, 2001

Subject	Proposal	Requestor	Source/Date	Council Meeting
<ul style="list-style-type: none"> • Education • PPD schedule • DWD 80.02(2)(e)4 • Wage monitoring 	<p>Attorney Helen Schott testified that:</p> <ul style="list-style-type: none"> • Employees need more information, particularly about their rights to medical choice. Too many are intimidated into going to the HMO. • The PPD schedule is too low, e.g., for loss of eye and deafness in 1 ear. Insurer rates have dropped 7 of the last 10 years. • The proposal to amend DWD 80.02(2)(e)4 to extend the threshold for a final medical report to injuries with 3 weeks of PPD to 6 weeks of PPD is not warranted and should not be approved. The Department's numbers are misleading. <i>Comment. Lee Shorey and Ms. Schott met to work out any apparent misunderstanding.</i> • The department needs to monitor deliberate underpayments based on low wages more closely. 	Attorney Helen Schott	Appearance	PH - Jan 29, 2001
Drug testing	Provide an automatic reduction for positive test without regard to injury causation.	<p>Paul Hintgen, United Heartland</p> <p>Deb Brister-Radder, Engineered Plastics Corp.</p>	Appearances	PH- Jan 29, 2001
Registration	Rep. John J. Ryba completed an attendance form.	Rep. Ryba	Did not testify	PH - Jan 29, 2001
Hearings	Provide faster hearings or ADR.	Gerrie Eaton	E-Public hearing comments, Jan 6, 2001	Jan 29, 2001
Community service	Allow employee to be volunteered to perform work at the employer's premises for organizations like the Red Cross if the work is within light duty work restrictions. The employer would pay the worth of the job. The insurer would make up the difference in temporary partial disability. The employee would not be expected to work full-time. The community service activity would not last more than 3 months.	Lynn Crisci, CPCU, ARM, ACE	FAX, Jan 16, 2001	Feb 28, 2001

Subject	Proposal	Requestor	Source/Date	Council Meeting
Burden of proof	Shift the burden of proof to insurance companies to prove that the claim is not justified.	Mark Rossmiller	e-mail, Feb 13, 2001	Feb 28, 2001
Privacy	Prevent employer from posting the names, injury dates, nature of the injury, the department the injury happened in, and how many previous claims the employee filed. Her employer does this as part of its safety program. She believes it is embarrassing.	Laurie Lanala	e-mail, Oct 11, 2000	Feb 28, 2001
Council membership	<p>Require that at least one member of the advisory council be a non-union, non-management person.</p> <p><i>Comment. The division administrator for the Worker's Compensation Division is a member of the Council. By longstanding tradition, the administrator chairs the Council, but does not vote.</i></p>	Rep. Jeskewitz on behalf of Mr. William Swift	Letter, Feb 6, 2001	Feb 28, 2001
15%/\$15,000 Cap for employer safety violations	<p>Increase the \$15,000, the 15% percent, or both, because the law has not been changed in 20 years.</p> <p>Ms. Burch submitted written testimony through her attorney because she was unable to appear. To summarize, she said that she has a serious disabling injury to her leg. Her temporary disability was \$1800; her PPD was \$2760. The total is \$4560. The 15% safety violation would only be \$684. Attorneys say this is not even worth their time. She was off 2.5 months during which she had increased expenses directly related to her injury that went uncompensated. She still had to pay for medical and dental insurance. She had to pay for a babysitter while in the hospital. She had to pay for a taxi to buy groceries. She said she believes in protecting companies from petty lawsuits but employees need a safe working environment.</p>	Attorney Helen Schott for Ms. Kris Burch	Letter, January 31, 2001	Feb 28, 2001

Subject	Proposal	Requestor	Source/Date	Council Meeting
Penalty	<ul style="list-style-type: none"> • Improper Direction of WC Claims to Group Health Carriers. Any insurer that attempts to improperly direct a worker's compensation claim to another health carrier for payment shall be penalized \$xxxx. 	State Medical Society	Feb 9, 2001	Feb 28, 2001
Collection	<ul style="list-style-type: none"> • Refusal to Pay. If after proper notification by the department an insurer or self-insured employer refuses to pay a provider the amount determined by the department in the necessity of treatment dispute resolution process, the department shall take all actions necessary, including the filing of an action in circuit court, to recover the amount due the provider. <p>OR</p> <ul style="list-style-type: none"> • An insurer or self-insured employer that refuses to pay a provider after having been properly notified by the department shall pay a penalty of \$xxxx in addition to the interest specified under s. DWD 80.73(5)(b). <p><i>Comment. DWD 80.73(5)(b) provides for a simple interest credit.</i></p>	Wis. Chiropractic Association		

Prepared by
Richard D. Smith, Director
Bureau of Legal Services
Worker's Compensation Division